

COMMUNICATING FINDINGS

CLOSING MANAGEMENT MEETING

A closing meeting must be held with senior management at the conclusion of any on-site compliance/CRA examination or review. An on-site review includes:

- Fair Lending or other consumer complaint investigations;
- Visitations; or
- Other Special Reviews.

Attendance by financial institution representatives other than management is at the discretion of senior management. These may include: consultants, counsel, accountants, holding company officers, directors, and employees who work directly with consumer protection laws or CRA. When practical, at least two FDIC representatives should be present at the closing meeting.

Management must be informed that examination findings, including compliance/CRA ratings, are not final until the appropriate reviews are conducted by review staff, Field Supervisors, and/or the Regional or Washington Offices, as applicable. Regional Offices should generally approve any enforcement action recommended by the examiner through consultation prior to the meeting.

The closing meeting should be used to:

- Summarize examination or review findings. All critical issues should be discussed. If significant issues arise subsequently, these should be discussed with senior management either in person or by telephone. If senior management presents significant new information at the closing meeting, additional review by the examiner may be required. In such instances, the examination process should be left open for further review of applicable regulatory issues, the institution's records, and a possible second meeting with management.
- Discuss, when appropriate, positive findings to reinforce the institution's compliance/CRA efforts.
- Provide recommendations to address identified weaknesses or deficiencies.
- Obtain management's response(s) and commitment(s) for corrective action for deficiencies noted in the compliance management system and for cited violations.
- Advise management of recommended composite compliance and CRA ratings, as well as any recommendations for formal or informal enforcement actions and civil money penalties.

The agenda for the closing meeting should indicate the order of discussion items based on their significance to the overall conclusions. The agenda should also include a tentative listing of violations, and to the extent possible, draft copies of the pertinent violation

sections of the Report of Examination should be provided. A copy of the agenda should be filed with the workpapers.

BOARD MEETING

The purpose of a meeting with the financial institution's board is to convey the pertinent findings of the examination directly to persons ultimately responsible for the operating policies and procedures of the institution. Board meetings should be conducted after the closing meeting with management, and should be attended by at least a quorum of directors/trustees. The EIC, Field Supervisor, and/or Review Examiner or senior member of the Regional Office staff should attend, as applicable. Board meetings are required when one or more of the following circumstances are present:

- Significant problems that require consultations with the Regional Office (refer to the Consultation Policy for further information);
- An informal or formal enforcement action is recommended;
- The proposed compliance rating is "3," "4," or "5";
- The proposed composite CRA rating, state rating, or multi-state rating is "Needs to Improve" or "Substantial Noncompliance"; or
- The institution's management or board requested such a meeting.

A board meeting is not required for:

- Visitations;
- Consumer complaint investigations; or
- Other on-site reviews.

The Board meeting should be used to discuss examination findings and to advise the board of the recommended compliance and CRA ratings and when applicable, any recommended enforcement actions. When significant issues requiring consultations with the Regional Office are present, the appropriate requirements of the consultation policy should be followed prior to scheduling the Board meeting.

Generally Board meetings should be conducted before the examination report is forwarded to the appropriate staff for review; however, in special circumstances, the meeting may be conducted after the report is forwarded for review. If this occurs, the EIC should prepare a memorandum to the Regional Director summarizing the pertinent issues from the Board's discussion for inclusion in the Report of Examination.

The agenda for the closing meeting should indicate the order of discussion items based on their significance to the overall conclusions. A copy of the agenda must be filed in the examination workpapers.

During concurrent examinations with Risk Management (RM), closing management and board meetings must be coordinated with RM examiners. Presentations to the board should be planned for regularly scheduled meetings, whenever possible. Requests from

management, such as for separate meetings, should be considered and reasonably accommodated.

REPORT OF EXAMINATION

Introduction

The Report of Examination (ROE) communicates the results of a compliance examination to the board of directors and senior management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution's compliance management system, presents findings and violations (if any) in order of significance and as they relate to the compliance management system, and offers recommendations for addressing deficiencies and improving future compliance risk management performance. The Report of Examination is a stand alone document that details the:

- scope of the examination;
- compliance rating;
- examiner's comments and conclusions on compliance management, including recommendations for corrective action and management's response to the findings and recommendations; and
- significant violations and other matters of supervisory concern.

This chapter identifies minimum documentation and administration requirements for completing a ROE. Specifically, it provides guidance on:

- Format of the Report
- Content of the Report
- Supervisory Comments
- Review of the Report

Format of the Report of Examination

The ROE should be organized as follows:

- Transmittal Letter
- Cover Page
- Examiner's Comments and Conclusions
 - Scope of the Examination
 - Consumer Compliance Rating
 - Compliance Management
 - Board and Management Oversight
 - Compliance Program
 - Audit
 - Recommendations
 - Enforcement Actions (if applicable)
 - Community Reinvestment Act Examination (if applicable)

- Meeting with Management
- Significant Violations Page(s)
- Supervisory Comments (if applicable)

The following is substantive guidance pertaining to the various sections of the ROE.

Content of the Report of Examination

The overall tone of the ROE should be consultative and its content designed to educate the board and management. The ROE should contain sufficient information to support the rating, conclusions and recommendations. However, it is not necessary to provide lengthy factual summaries of policies, procedures, management structure or the like. The ROE must assess the strengths of the banks compliance management system, clearly identify the most critical deficiencies and related causes, and aid the board and management in developing an action plan to address the findings. The report should be informative and, regardless of the institution's consumer compliance rating, concise. Findings should be presented in order of significance, with greater detail provided about the most serious matters.

Only significant findings and violations are to be reported in the ROE. These matters represent the highest degree of risk to the institution or its customers and require management's immediate attention.

Significant findings include weaknesses in one or more components of an institution's compliance management system that:

- result, or could result, in a significant violation of federal consumer protection laws and regulations;
- result in a large number of isolated violations; or
- result in a continuation of a compliance management system deficiency cited at the previous examination.

Fair lending matters should be incorporated in the ROE. Fair lending should be specifically noted in the scope section of the ROE, and the findings incorporated in the other sections of the ROE as appropriate.

The EIC should use the subheadings below to emphasize important issues and provide structure and organization to the ROE.

Scope of the Examination

This section of the ROE contains the following elements:

- Date of the examination, review period covered, and name of the examiner-in-charge
- Type and purpose of the examination
- Compliance management, operational, and regulatory areas reviewed

- Methods used to review CMS and operations
- Offices visited

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. In addition to the rating, the EIC should provide a brief description of the principal factors that contributed to the assigned rating and a statement about the overall improvement or decline of the institution's compliance posture since the last compliance examination.

Compliance Management

This section of the ROE discusses the overall quality of the institution's compliance management system and the EIC's conclusions regarding the board and management's ability to effectively meet its compliance responsibilities, along with recommendations for corrective action. The EIC will identify compliance system strengths and weaknesses, and explain significant findings and regulatory violations. Explaining the cause and severity of program deficiencies or violations is critical to proposing appropriate changes or corrective actions that will be accepted by management and will prevent recurrences.

The analysis should support the consumer compliance rating assigned to the institution. In particular, the examiner should take the opportunity to relate the board's and management's oversight of the institution's compliance management system to the overall results of the examination and the general compliance posture of the institution.

This section should discuss the EIC's conclusions relative to each of the three elements of a compliance management system:

- Board of directors and senior management oversight;
- Compliance program; and
- Audit function.

The discussion for each compliance management system element should begin with a summary statement about the quality of the financial institution's compliance management practices (e.g., strong, adequate, or weak). The summary statement should be followed by more detailed comments that explain the examiner's findings and conclusions. Both positive and negative aspects of the institution's management of its compliance responsibilities should be discussed. If the institution's compliance management system element is strong, the EIC should briefly explain why. The discussion should explain the relationship between deficiencies in the compliance management system and significant violations that resulted, or could result, from such deficiency. Any consequences of violations cited during the examination should also be communicated, such as Truth in Lending reimbursements, administrative enforcement actions, or potential civil liability.

The EIC's comments should address any deficiencies noted in the following areas:

- management's compliance knowledge, ability, and commitment
- organizational and reporting structure of the compliance management system
- knowledge, experience, and effectiveness of the compliance officer or staff with compliance responsibilities
- changes in personnel, technology, or service providers
- scope and adequacy of compliance policies, procedures, and training
- ability to identify, monitor, and correct compliance system deficiencies and regulatory violations
- frequency and effectiveness of the compliance audit function

At the conclusion of the discussion for each compliance management system element, the EIC should identify the statute(s) or regulation(s) from which significant violations have been cited as a result of the deficiencies in the compliance management system element. The reader should be referred to the Significant Violations pages for further details on all significant violations found during the compliance examination.

In the case of reimbursements, the EIC should state the total reimbursable amount when reliable estimates have been determined. Otherwise, when reliable estimates of the total reimbursable amount are not available, state so and provide an estimate based upon the examiner's calculations. Also, provide the assumptions on which the estimate is based.

Recommendations for Corrective Actions and Management Response

The EIC should provide the board and management with constructive recommendations for corrective actions that address the specific deficiencies noted in the narrative of the ROE. The recommendations should be appropriate in light of the size and complexity of the institution's operations. The recommendations should enable the institution to resolve current compliance management system deficiencies and regulatory violations, and to minimize future violations by making improvements to its compliance management system.

Examiners should use this section to provide guidance and advice to a financial institution relating to its director and management oversight, compliance program, and audit function (e.g., making specific suggestions to improve the institution's method of educating employees about their compliance responsibilities). Ultimately, the board and management of the institution are responsible for determining the actions they will take to address the examination findings. However, the recommendations should be written in a way that demonstrates to the board and management the importance and value of taking the corrective action.

The EIC should discuss any corrective action taken or promised by the board or management, and the time frames for promised action. The EIC should consider identifying by name those individuals who commit to specific corrective actions, in order to assist in follow-up efforts at future examinations. Place this discussion, in an italic

font, after each recommendation as a “Management Response.” Alternatively, an overall “Management Response” comment may be provided after all recommendations, if management’s position is similar on all of them.

Enforcement Actions

When administrative enforcement actions are contemplated by the EIC, the ROE should inform the board of directors that the EIC plans to recommend to FDIC management that an enforcement action be taken against the institution. The board should clearly understand the issue and the type of potential enforcement action.

This section should also discuss how management has addressed and/or resolved outstanding enforcement actions. The EIC should include the type of enforcement action and the date the enforcement action was issued or, in the case of a bank Board Resolution, adopted.

A list of each provision of the applicable enforcement action and a brief discussion of the financial institution’s compliance with each provision should be included, as well as the examiner's recommendation on whether the enforcement action should be continued, removed, or changed to another type of enforcement action.

If a visitation was conducted between examinations, and a Visitation Report was forwarded to the financial institution detailing compliance with the provisions of the enforcement action, the examiner need only address the remaining outstanding provisions of the enforcement action. The examiner should also refer to the Visitation Report.

Comments and Conclusions on Community Reinvestment Act Examination

This section should be included if a concurrent Community Reinvestment Act (CRA) examination was conducted. State the bank’s CRA rating, and briefly discuss the basis for it. The comments should refer the reader to the CRA Performance Evaluation.

Meeting with Management

Under this section, provide the following:

- Date of meeting with management
- Names and titles of financial institution attendees
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should specifically address management’s disagreement with the recommended consumer compliance rating and any proposed enforcement action(s), if applicable, and the reasons for the disagreement. In addition, the EIC should provide comments on management’s willingness to make Truth in Lending reimbursements. Management’s response to the Community Reinvestment Act rating or performance evaluation should be discussed also.

If a meeting is held with the board of directors/trustees, provide the following:

- Date of the meeting with the board of directors
- Names and titles of directors/trustees in attendance
- Names and titles of persons in attendance at the request of the institution's directors/trustees
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should discuss the board's response to the examination findings. It should include, as applicable, any corrective actions promised by the board and/or any indications on the part of the board that they will agree to a proposed enforcement action (formal or informal).

Significant Violations Page(s)

The Significant Violations Page(s) serve as the institution's official record of all significant violations cited during the examination. They should readily call attention to the general nature and magnitude of these matters. Each violation should be related to the underlying deficiency in the component(s) of the institution's compliance management system that allowed the violation to occur so that the board and management may take meaningful corrective actions to improve the institution's compliance risk management. All findings and violations should be addressed in descending order of importance.

Significant violations are violations of a specific law or regulation that individually or collectively represent serious concern for the financial institution. Significant violations include those violations that meet any of the following criteria:

- Recurrent and outstanding for an extended period of time;
- Affect, or could affect, a large number of transactions or consumers in a way that has, or could have, severe consequences for the consumers or the financial institution;
- Willful act or omission to defeat the purpose of or circumvent law or regulation; or
- Continuation of a violation cited at the previous examination, and is repeated in exactly the same manner at the current examination.

Violations deemed to be truly isolated, inadvertent, and not indicative of an institution's practices should not be considered significant and not discussed in the ROE. They should, however, be reported to the bank for correction, and recorded on SOURCE as "other" violations.

The examiner should include the following elements, as applicable, for each significant violation cited during the examination:

- A summary of the regulatory section and the six digit violation code obtained from the Automated ROE Violation Code Directory

- How the institution's practices differed from the requirements of the regulatory section
- Compliance management system deficiency(ies) that allowed the violation to occur
- Corrective action taken by the institution before or during the examination (indicate if a previously identified violation remains unchanged since the previous examination)
- Corrective action recommended by the EIC
- Management's response
- Sample size and number of violations identified in the sample, and two or three examples for each violation. (This requirement is not applicable to standardized disclosures or public notices, or in cases in which management admits to the violation before transaction sampling is performed).

Special Rule for Reimbursable Truth in Lending Violations

Include reimbursable Truth in Lending violations under a separate heading, "Reimbursable Truth in Lending Violations", in the Significant Violations pages. In addition to the elements listed in the section above, provide the violation code and summary from the Automated ROE Violation Code Directory for both the specific section of Regulation Z involved and the applicable provision of the Truth in Lending Act.

In the text of the violation write-up, supply the following information to support the presence of a "pattern or practice" for each type of reimbursable Truth in Lending violation:

- Type of loan
- Special characteristics or features, if any
- Number of loans sampled with reimbursement violations

For violations involving both understated Annual Percentage Rates (APR) and Finance Charges (FC), identify the larger of the reimbursable amount.

In addition to the above information, forward to the Regional Office the following for each type of reimbursable violation cited (as applicable):

- APR calculation printouts
- TIL disclosures
- Contract note
- Commitment letter
- HUD-1/1A Forms
- Private mortgage insurance agreements
- Interest rate indices
- Trial balance, loan history, or payment record showing first payment and at least one subsequent payment
- Itemization of amount financed (if separate)/Good Faith Estimate
- Amortization schedule

- Any other documentation supporting adjustments to the amount financed (e.g., credit insurance application forms, etc.)

Supervisory Comments

The purpose of the Supervisory Comments is to provide the FDIC Regional and Washington Offices and other banking regulators with confidential or controversial information. It also provides information to succeeding examiners on supervisory and examination activities relating to the institution. The Supervisory Comments are not included in the ROE transmitted to the financial institution.

Most of the information that examiners traditionally placed on this page can now be found in SOURCE or in the examination workpapers. However, examples of information that continues to be important to report on this page include:

- Planned changes in key management positions or compliance personnel that are not widely known in the institution,
- Pending litigation on a consumer protection matter that is not widely known in the institution,
- Tentative plans or strategies that are not widely known in the institution that may affect the frequency or scope of future compliance examinations.

When there are no issues to discuss, or all information is accessible in SOURCE or the examination workpapers, exclude this page.

Review of the Report of Examination

The EIC must complete and put the following documents into the System of Uniform Reporting of Compliance and CRA Examinations (SOURCE) for review:

- Transmittal Letter
- Cover Page
- The ROE
- Significant Violation Pages (if any)
- Supervisory Comments (if applicable)
- Updated Risk Profile and Scope Memorandum

Reviewers should question any gaps, inconsistencies, or any unsupported or unexplained conclusions contained in the compliance Report of Examination or any other document informing the institution of a FDIC material supervisory determination. The assigned RE and the EIC must strengthen any weak areas with supporting data before the compliance Report of Examination or document is submitted to the institution.

Communication between the FDIC and the financial institution should occur if, during the review process, the examiner's recommended rating is downgraded or the examiner's conclusions are changed, adversely affecting the financial institution.

Subsequent to final approval of the ROE, the Cover Page, Transmittal Letter, ROE, and Significant Violations pages should be delivered to the board of directors of the financial institution.

The EIC should coordinate with the FS to ensure that all SOURCE submission requirements are met.